

I certify that the attached is a true and
correct copy of HB 1269, which
was filed of record on FEB 25 1991
and referred to the committee on:

Natural Resources

Betty Murray

Chief Clerk of the House

1991 MAR -7 PM 1:38

HOUSE OF REPRESENTATIVES

FILED FEB 25 1991

By

Colles

H. B. No. 1269

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the Texas Water Commission to consider
the economic benefit of noncompliance when setting certain
administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 26.136(c), Water Code, is amended to read
as follows:

(c) In determining the amount of the penalty, the commission
shall consider:

(1) the nature, circumstances, extent, duration, and
gravity of the prohibited acts with special emphasis on the hazard
or potential hazard created to the health or safety of the public;

(2) the impact of the violation on a receiving stream
or underground water reservoir, on the property owners along a
receiving stream or underground water reservoir, and on water users
of a receiving stream or underground water reservoir;

(3) the amount necessary to negate any economic
benefit to the person charged that is gained through the violation;

(4) [+3] with respect to the alleged violator:

(A) the history and extent of previous
violations;

(B) the degree of culpability, including whether
the violation was attributable to mechanical or electrical failures
and whether the violation could have been reasonably anticipated

1 and avoided;

2 (C) the demonstrated good faith, including
3 actions taken by the alleged violator to rectify the cause of the
4 violation; and

5 (D) [~~any--economic--benefit--gained--through--the~~
6 ~~violation;--and~~

7 [~~E~~] the amount necessary to deter future
8 violations; and

9 (5) [~~4~~] any other matters that justice may require.

10 SECTION 2. Section 361.252(c), Health and Safety Code, is
11 amended to read as follows:

12 (c) In determining the amount of the penalty, the commission
13 shall consider:

14 (1) the nature, circumstances, extent, duration, and
15 gravity of the prohibited act with special emphasis on the hazard
16 or potential hazard created to the health or safety of the public;

17 (2) the impact of the violation on a receiving stream
18 or underground water reservoir, on the property owners along a
19 receiving stream or underground water reservoir, and on water users
20 of a receiving stream or underground water reservoir;

21 (3) the amount necessary to negate any economic
22 benefit to the person charged that is gained through the violation;

23 (4) [~~3~~] with respect to the alleged violator:

24 (A) the history and extent of previous
25 violations;

26 (B) the degree of culpability, including whether
27 the violation was attributable to mechanical or electrical failures

1 and whether the violation could have been reasonably anticipated
2 and avoided;

3 (C) the demonstrated good faith, including
4 actions taken by the alleged violator to rectify the cause of the
5 violation; and

6 (D) [~~economic--benefit--gained-by-the-violation;~~
7 ~~and~~

8 [~~+~~E+] the amount necessary to deter future
9 violations; and

10 (5) [~~+~~4+] any other matters that justice may require.

11 SECTION 3. This Act takes effect September 1, 1991.

12 SECTION 4. The importance of this legislation and the
13 crowded condition of the calendars in both houses create an
14 emergency and an imperative public necessity that the
15 constitutional rule requiring bills to be read on three several
16 days in each house be suspended, and this rule is hereby suspended.

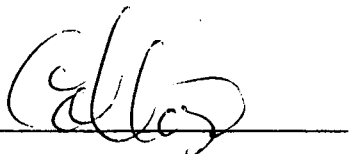
HOUSE COMMITTEE REPORT

1st Printing

91 MAY 14 PM 4:57

HOUSE OF REPRESENTATIVES

By



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13 crowded condition of the calendars in both houses create an
14 emergency and an imperative public necessity that the
15 constitutional rule requiring bills to be read on three several
16 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Gib Lewis
 Speaker of the House of Representatives

MAY 13, 1991
 (date)

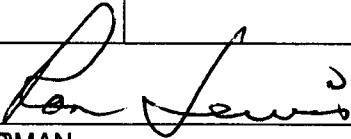

Sir:
 We, your COMMITTEE ON NATURAL RESOURCES,
 to whom was referred HB 1269 have had the same under consideration and beg to report
 (measure)

back with the recommendation that it
 (x) do pass, without amendment.
 () do pass, with amendment(s).
 () do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
 A fiscal note was requested. (x) yes () no An author's fiscal statement was requested. () yes (x) no
 A criminal justice policy impact statement was requested. () yes (x) no
 An equalized educational funding impact statement was requested. () yes (x) no
 An actuarial analysis was requested. () yes (x) no
 A water development policy impact statement was requested. () yes (x) no
 A federal funds impact statement was requested. () yes (x) no
 (x) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.
 This measure () proposes new law. (x) amends existing law.
 House Sponsor of Senate Measure _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Lewis, R., Ch.	x			
Willy, V.C.	x			
Collazo, C.B.O.	x			
Bosse	x			
Greenberg	x			
Haggerty				x
Hilderbran				x
Puente	x			
Yost	x			

Total 4 aye
 0 nay
 0 present, not voting
 2 absent


 CHAIRMAN

 COMMITTEE COORDINATOR

BILL ANALYSIS

BACKGROUND

In a Legislative Budget Board performance report, it was noted that the Texas Water Commission's statutes constrict the agency from adequately penalizing violators for economic benefits gained through failure to comply with the law. Sometimes it is economically beneficial for companies to risk penalization because the penalty costs less than compliance.

It is felt that the agency could more effectively address this problem by emphasizing the economic factor in determining an administrative penalty. This is possible by evaluating the economic benefit separately from the other violator-specific factors the commission must consider in determining a penalty amount.

PURPOSE OF THE BILL

This bill rewords and relocates the economic factor in determining an administrative penalty. Relocating economic benefit removes it from adjustment factors and increases its importance to one of three primary factors to initially be considered in calculating the administrative penalty.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 26.136(c), Water Code, to add Subsection (c)(3), which provides that the Commission assess the amount necessary to negate economic gains from violations when determining penalties for offenses. Also changes Subsection (3) to (4), and deletes (4)(D). Reletters and renumbers accordingly.

SECTION 2. Amends Section 361.252(c), Health and Safety Code, by repeating exactly the changes made in Section 1 of this Act.

SECTION 3. Effective date: September 1, 1991.

SECTION 4. Emergency clause.

RULEMAKING AUTHORITY

It is the opinion of this committee that this bill does not delegate rulemaking authority to any state agency, officer, department, or institution.

SUMMARY OF COMMITTEE ACTION

Notice was posted in accordance with House Rules, and HB 1269 was heard in a full committee public hearing on March 18, 1991. Testimony was taken in favor of the bill. A witness was present in opposition, but did not testify on the bill. The motion to refer HB 1269 to subcommittee carried without objection. Notice was posted in accordance with House Rules, and HB 1269 was taken up at a formal meeting of the subcommittee on April 17, 1991. The motion to report HB 1269 favorably back to the full House carried by a vote of 3 ayes, 0 nay, 0 PNV and 0 absent. The subcommittee report on HB 1269 was taken up at a full committee

public hearing on May 13, 1991. No witnesses were present on the bill. The motion to report HB 1269 favorably back to the full House with the recommendation that it be placed on the Local and Consent calendar carried by a vote of 7 ayes, 0 nays, 0 PNV and 2 absent.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE

March 18, 1991

TO: Honorable Ron Lewis, Chair
Committee on Natural Resources
House of Representatives
Austin, Texas

IN RE: House Bill No. 1269
By: Collazo

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1269 (relating to the authority of the Texas Water Commission to consider the economic benefit of noncompliance when setting certain administrative penalties) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would require the Texas Water Commission to consider the economic benefit of noncompliance when setting administrative penalties.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Probable Cost Out of the General Revenue Fund</u>	<u>Change in Number of State Employees from FY 1991</u>
1992	\$ 154,100	+ 2
1993	151,607	+ 2
1994	151,607	+ 2
1995	151,607	+ 2
1996	151,607	+ 2

No significant fiscal implication to units of local government is anticipated.

Source: Texas Water Commission;
LBB Staff: JO, JWH, DF, JG, DE

H. B. No. 1269

By Collazo

A BILL TO BE ENTITLED
AN ACT

relating to the authority of the Texas Water Commission
to consider the economic benefit of noncompliance when
setting certain administrative penalties.

FEB 25 1991

1. Filed with the Chief Clerk.

MAR 5 1991

2. Read first time and Referred to Committee on

NATURAL RESOURCES

MAY 13 1991

3. Reported ☒ favorably ^(as amended)_(as substituted) and sent to Printer at 12:30pm
MAY 14 1991

MAY 14 1991

4. Printed and distributed at 4:57p

MAY 15 1991

5. Sent to Committee on Calendars at 8:02am
Transferred to Calendars at 4:04pm
MAY 23 1991

MAY 23 1991

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)
(Record Vote of _____ yeas, _____ nays, _____
present, not voting).

7. Motion to reconsider and table the vote by which H.B. _____ was ordered
engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas,
_____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed
to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____
present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote
of _____ yeas, _____ nays, _____ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed
prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____
nays, and _____ present, not voting).

12. Ordered Engrossed at _____

13. Engrossed.

14. Returned to Chief Clerk at _____

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on _____

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read
first time.

20. Ordered not printed.

21. Regular order of business suspended by
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION: OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments,) (as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) (Substitute) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, _____ present, not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____

HOUSE OF REPRESENTATIVES

91 MAY 14 PM 4:57

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